



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Toroid Corporation

File: B-226816

Date: June 26, 1987

DIGEST

1. Where an invitation for bids requires the submission of descriptive literature to establish conformance of the product offered with the material specifications of the solicitation, a bid must be rejected as nonresponsive if the literature submitted evidences nonconformity with the specifications.
2. Protest of the type of a procurement used, filed after bid opening, is untimely.

DECISION

Toroid Corporation protests the rejection of its bid under invitation for bids (IFB) No. F33659-87-BA007 issued by the Newark Air Force Station, Ohio, for 29 force calibration machines with manuals.

The protest is denied in part and dismissed in part.

Toroid states that the Air Force's finding that Toroid's bid was nonresponsive is unwarranted. Toroid states that it was in total compliance with the specifications and that it submitted product literature which unquestionably qualified Toroid as a knowledgeable and qualified manufacturer. Toroid states that accepting its bid would save the government almost \$100,000.

The solicitation set out the salient characteristics for a 500 pound capacity force calibration machine. The solicitation contained a requirement for submission of descriptive literature. The literature was to address or describe every specification, physical dimension, tolerance, voltage or any other requirement of the purchase description/specification contained in section C. The solicitation specifically warned that if the required descriptive literature was not included in the bid or if the material submitted was inadequate for its intended purpose, the bid would be determined nonresponsive.

The Air Force states that it rejected Toroid's bid as nonresponsive because the descriptive literature submitted

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by Toroid was inadequate to allow a determination as to whether the product it offered met the salient characteristics of the purchase description.

The information Toroid submitted consisted of a commercial brochure describing a 12,500 pound dead weight machine, a booklet describing the company and a few of its products and a cover letter. The cover letter stated that the 12,500 pound machine was similar in design to the 500 pound machine which Toroid planned to provide. Toroid also stated that the calibrator would fit within the required size envelope and that Toroid would meet all design criteria in the specifications.

It is well-settled that an agency properly rejects a bid as nonresponsive where the bidder submits descriptive literature as required that shows that the product it is offering does not conform to the material specifications set forth in the IFB. Harnischfeger Corp., B-220036, Dec. 14, 1985, 85-2 CPD ¶ 689. This is because of the fundamental principles of sealed bidding that responsiveness concerns a bidder's unequivocal offer to provide supplies or services in total conformity with the material terms and conditions of the solicitation, and that responsiveness must be determined on the basis of the bid as submitted. Continental Telephone of California, B-213255, Apr. 17, 1984, 84-1 CPD ¶ 428. Thus, even if the offered product in fact possesses the required features, bid rejection is required when the literature does not clearly show conformance with the requirements. Harnischfeger Corp., B-220036, supra. We will not disturb the agency's determination concerning the adequacy of required descriptive literature absent a clear showing of unreasonableness, abuse of discretion, or a violation of procurement statutes and regulations. Washex Machinery Corp., B-214591.2, Sept. 25, 1984, 84-2 CPD ¶ 352.

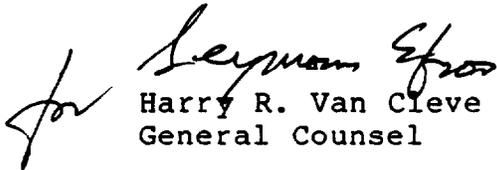
Here, the Air force required a 500 pound calibrator but Toroid provided information on a 12,500 pound calibrator, which was described as "similar" but not identical to the 500 pound machine required. The dissimilarities were not described. Accordingly, the Air Force did not have the necessary descriptive literature to show whether Toroid could meet the Air Force's needs. With respect to Toroid's cover letter generally stating that it would meet the design criteria in the specifications, we have held that such blanket statements of compliance are not sufficient to make a nonresponsive bid responsive. Mechanical Equipment Company Inc., B-213236, Sept. 5, 1984, 84-2 CPD ¶ 256.

As to Toroid's assertion that acceptance of its low bid would be in the best economic interest of the government, the possibility that the government might realize a monetary

savings by waiving a material deviation in the bid does not outweigh the importance of maintaining the integrity of the competitive bidding system by rejecting nonresponsive bids. Meyer Tool and Mfg., Inc., B-222595, June 9, 1986, 86-1 CPD ¶ 537.- Although this rule may seem harsh to Toroid, the bidder bears the burden of insuring that its bid conforms to the IFB requirement. Id.

In its comments on the agency report Toroid states that this solicitation should have been conducted under a request for proposals, not an IFB. To the extent this constitutes a protest of the solicitation, it is clearly untimely since it was filed after the bid opening date. 4 C.F.R. § 21.2(a)(1) (1986).

The protest is denied in part and dismissed in part.


Harry R. Van Cleave
General Counsel